

Date of decision: 8-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(8-12-1995)

Mr. P. M. Thakkar for the petitioner  
Mr. D. A. Bambania for respondent No.1  
Mr. J. D. Ajmera for respondent No.2

ORAL JUDGMENT:

Heard the counsel for the parties. The petitioner made application on 20th March 1981 to respondent No.2 for

grant of Samman Pension as provided under the Swatantrata Sainik Samman Pension Scheme, 1980 which was formerly known as Freedom Fighters' Pension Scheme, 1972. The petitioner claimed Samman Pension on the basis of his underground activities for more than six months. Copy of the Swatantrata Sainik Samman Pension Scheme, 1980 has been produced by the petitioner at annexure-F to the petition. A copy of the application submitted by him has also been produced at annexure-A to the petition. In support of his claim the petitioner filed affidavits of veteran freedom fighters, copies of which have been submitted along with the writ petition. These are affidavits of Shri Jugatrambhai Chimanlal Dave, Shri Kikubhai Jagannath Pathak and Shri Makanjibhai Patel. This application filed by the petitioner has been forwarded by respondent No.2 to respondent No.1. Along with the affidavits of veteran freedom fighters, the petitioner further submitted his own affidavit and extract from Surat Zilla Sevalal Itihas, letter of Collector, Surat and that of the Government of Gujarat, Sachivalaya, Gandhinagar, dated 17-9-1973.

2. Respondent No.1 vide his letter dated 5-11-1981 asked the petitioner to explain about his underground activities, which have been explained by the petitioner vide his letter dated 14-11-1981 produced at annexure-C. Respondent No.2, vide his letter dated 14-5-1985, intimated the petitioner that his claim is not acceptable as he has not produced satisfactory evidence relating to his claim on the basis of underground suffering during the freedom movement, and also on the ground that respondent No.1 has not recommended the case of the petitioner for grant of pension. Respondent No.1, on further approach by the petitioner refused to consider his case on the ground of nonproduction of record proving that the petitioner went underground during the Quit India Movement in August, 1942. This has been done vide order dated 23-8-1995. Thereafter the petitioner approached the office of the Commissioner of Police, Surat City, District Superintendent of Police, Surat (Rural) and the Police Sub Inspector, Kamrej in order to get some record or evidence to prove participation of the petitioner in the freedom struggle as desired by the respondents. The aforesaid three authorities by their separate communications informed the petitioner that they are unable to provide relevant record proving that the petitioner had gone underground or that the petitioner had participated in the freedom struggle for independence. The petitioner produced the letters of all the aforesaid officers to the Collector, Surat for doing the needful in the matter. The petitioner thereafter continued to pursue the matter with the respondents for grant of pension under the scheme, but as nothing has been done in his favour he

has approached this Court by filing this writ petition.

3. The District Collector, Surat, to whom the petitioner submitted the certificates issued to him by the Police authorities, has not given any reply to the same. Clause 9 of the scheme provides for, 'how to prove the claims'. So far as the scheme which is based on the underground activities in the freedom movement is concerned, it has been provided that documentary evidence by way of Court's/Government's orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention should be furnished. In absence of those documents it has next been provided that certificate from veteran freedom fighters who had themselves undergone imprisonment for five years or more, if the official records are not forthcoming due to their non-availability, should be produced. It is the case of the petitioner that regarding his underground activity during the Quit India Movement, official records are not forthcoming, due to their non-availability. He submitted three affidavits. From the first affidavit of Shri Jugatrambhai Chimanlal Dave it is clear that he suffered imprisonment for more than five years during the freedom struggle. In the affidavit Shri Dave stated that the petitioner remained underground for more than six months during the period 1942 to 1946, as he was one for whose detention orders were issued but he evaded arrest. So far as the affidavit of Shri Kikubhai Jagannath Pathak is concerned, his imprisonment period is less than five years. But he has been awarded Tamra Patra and life time political central pension. Same is the case with Shri Makanjibhai Patel whose imprisonment period is less than five years. It is the quality and not the quantity which needs to be considered. In the present case, even if two affidavits of prominent freedom fighters, namely, Shri Makanjibhai Patel and Kikubhai Jagannath Pathak are excluded, yet one affidavit remains of the freedom fighter who has undergone imprisonment for more than five years during the freedom movement of the country.

4. Respondent No.1 has filed reply to the writ petition and has come up with the case that the Advisory Committee had decided to reject the case of the petitioner because he has not produced any direct documentary evidence to show that he was a freedom fighter. His claim for State Pension was also rejected on the same ground. So far as the certificates given by the Police Commissioner, Surat City, District Superintendent of Police, Surat (Rural), and Police Sub Inspector, Kamrej are concerned, no reason whatsoever has been given for their non-consideration.

5. In para 6 of the reply, respondent No.1 has come up

with the case that the petitioner has not produced any direct documentary evidence, like warrant, etc., As regards the certificates of the police authorities which have been produced by the petitioner, respondent No.1 has come up with the case that the same do not comply with various provisions of the scheme. This is only a bald statement made without pointing out the provision from the scheme that the certificates are contrary to the same. I have already referred to the provisions of the scheme which provide that where official records are not forthcoming due to their non-availability, certificates from veteran freedom fighters who had themselves undergone imprisonment of five years have to be produced. The petitioner has produced sufficient material on record that the official record relating to his underground activities during the Quit India Movement or the freedom movement are not available. He produced certificates in the form of affidavits of veteran freedom fighters. Even if the two certificates are excluded, then one certificate remains, and it is not the requirement of the scheme that on the basis of one certificate pension claim is not maintainable.

6. Though reply has not been filed by respondent No.2, Mr. J.D. Ajmera, learned counsel appearing for respondent No.2 has stated that the certificate submitted by the petitioner of the freedom fighters who are receiving Central Pension are acceptable. It has also been stated by Mr. Ajmera that the State Government had sent the report which was received by the Ministry on 20th September, 1995 wherein the State Government has not recommended the case in absence of documentary evidence from the official record. It has next been contended by Mr. Ajmera that certificate of non-availability of record issued by the Commissioner of Police, Surat City, is not acceptable. Such certificate should have been issued by the Court or by the office of the District Magistrate. Unless such certificate is issued by the District Magistrate's office or by the Court, the case of the petitioner for grant of Samman Pension cannot be considered. Shri Ajmera very fairly conceded that it will be open to the petitioner to produce certificate from the appropriate authority and thereafter the petitioner's case will be again examined.

7. I am really shocked to see how respondents No.1 and 2 have proceeded in the matter of consideration of the application of the petitioner who claims to be a freedom fighter for Samman Pension. Looking to the reply of respondent No.1 and the contention raised by learned counsel for respondent No.2 I am satisfied that the matter of pension to freedom fighters has been dealt with in the most casual manner. No body has taken care sitting either at the

Central Government offices or the State Government offices that the petitioner has done what was within his reach and approach. The petitioner could not have snatched certificates from the office of the District Magistrate, Surat. He obtained certificates from the police authorities of the district and submitted those certificates to the District Magistrate, Surat way back on 22nd February, 1991. In case the District Magistrate is not acting on the application of the petitioner which was submitted in the year 1991, what the poor old man can do except approaching this court? The defence of respondent No.1 is that the petitioner's claim for grant of Samman Pension is not acceptable as he has not produced any direct documentary evidence to show that he was a freedom fighter. According to respondent No.1 such direct evidence must be in the form of warrant, etc., This defence of respondent No.1 is totally contrary to the requirements of the Samman Pension Scheme, 1980.

8. It is really shocking that Mr. H.R.Pathak, Deputy Secretary, General Administration Department, has filed the aforesaid affidavit without looking into the provisions of the Scheme. It appears that Mr. H.R.Pathak has not made correct statements in the affidavit. In the affidavit he has stated that he has perused copy of the petition which is not correct because in case he had perused copy of the writ petition to which the petitioner has annexed copy of the Swatantrata Sainik Samman Pension Scheme, 1980 he would not have come up with such a defence in the reply. The requirement of the scheme is production of certificate from veteran freedom fighters where the official records are not available. At the same time the defence which has been taken by respondent No.2 is also not acceptable. In such matters, this technical approach which has been adopted by the learned counsel for respondent No.2 before this Court is undesirable. In the matter of grant of Swatantrata Sainik Samman Pension the respondents should have taken realistic approach and should have provided all possible assistance to the claims of those persons so that expeditiously their applications are decided, and in case they are found to be eligible the pension may be given to them. The petitioner has already attained the age of 75 years. For the last 14 years the poor person is moving from pillar to post, and the respondents sitting in their air-conditioned offices are dealing with the case in a manner which is even contrary to the provisions of the Scheme itself. In the year 1991 he submitted application to the Collector along with the certificates issued by the Police Officers, but the District Magistrate has not given any reply. In such cases the officers at Gandhinagar in the Secretariate should have cared to see that the Collector issues the certificate. If

respondents No.1 and 2 and their officers are unable to get the certificate from the District Magistrate after the petitioner had submitted the application along with the certificates issued by the police authorities about non-availability of record, how it could be expected from the petitioner that he will be able to get these certificates. Taking into consideration all the facts and circumstances of the present case I am satisfied that it is a case where both the respondents have shown scant regard for the provisions of the Scheme and the application of the petitioner has been rejected wholly on arbitrary grounds. The application of the petitioner has not been considered in the manner and the perspective in which it should have been done.

9. In the result this writ petition is allowed in part.

The order of rejection of the application of the petitioner, as well as the recommendation of the Advisory Committee of the State Government stating that the petitioner is not entitled to Swatantrata Sainik Samman Pension are quashed and set aside. Respondent No.1 is directed to take necessary certificate from the District Magistrate, Surat, in respect of which the petitioner had submitted application in the year 1991. This exercise should be completed by respondent No.1 within a period of one month from the date of receipt of certified copy of this order. It is expected of the District Magistrate, Surat, who is not a party to the petition, that he may issue necessary certificate taking into consideration the certificates issued by the District Superintendent of Police, Surat( Rural) which has been brought to his notice by the petitioner vide his application dated 23-2-1991 within the time as stipulated above. Thereafter, respondent No.1 will consider the application of the petitioner for grant of Swatantrata Sainik Samman Pension within a period of one month and will send the papers to respondent No.2 within 15 days thereafter. Respondent No.2 thereafter shall consider the matter within one month of receipt of the recommendation from respondent No.1, and in case it is found that the petitioner is eligible for pension, then necessary orders in that behalf shall be issued forthwith. In case the petitioner is not found eligible for the grant of Samman Pension, reasoned orders shall be communicated to him forthwith by registered A.D. post. The petitioner, if found eligible for samman pension, shall be paid the same within a period of two months thereafter together with interest at the rate of 12% per annum from the due date. As an old person has been unnecessarily harassed , and he had to come to this Court for redressal of his grievance, it is a fit case in which the respondents should be saddled with cost. Respondent No.1 is directed to pay to the petitioner Rs.5,000/- (five

thousand) towards cost of this petition. It is directed that the amount of cost of Rs.5000/- shall be paid to the petitioner by crossed demand draft drawn in his favour. The petition stands disposed of with the aforesaid directions. Notice stands disposed of.

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